



COUNCIL OF CHIEF STATE SCHOOL OFFICERS

One Massachusetts Avenue, NW, Suite 700, Washington, DC 20001-1431 • 202/408-5505 • FAX 202/408-8072
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

May 21, 2001

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals, 445 Twelfth St., SW
Washington, DC 20554

**RE: COMMENT ON FURTHER RULE MAKING AND ORDER
CC DOCKET NO. 96-45/FCC 01-143**

The Council of Chief State Schools Officers (CCSSO) wishes to comment on the Notice of Proposed Rulemaking ("NPRM") adopted on April 26, 2001, in which the Commission proposes to revise the method for allocating discounts to schools and libraries under the federal universal service mechanism.

The challenge confronting any set of comments and recommendations associated with any modification in the rules for funding program applications this year is there will be "winners and losers." Our position on the proposed rule changes has been developed with considerable forethought and with some reservations. Nevertheless, we are convinced that a proposed rule change permitting funding for internal connections on alternate years could create more harm than good. For two major reasons, CCSSO opposes the possible modifications set forth in the NPRM and recommends keeping the funding priority for internal connections based on current rules.

First, the School and Library Division [SLD/USAC] has recently provided new information on the estimated percentage that would be prorated to each 90 percent applicant under the current rules. It appears that each applicant would receive 73 percent of their original funding request – much higher than the original 25-40 percent that was believed initially. Thus, instead of receiving their full 90 percent discount, an applicant qualifying for that level of support would receive a 73 percent discount.

Second, and most important, we strongly believe that it is poor public policy and inherently unfair to both applicants and service providers to change the funding priorities after the funding year's application process has begun. Schools and libraries make long and difficult decisions about what services and components to apply for, based on the rules set forth in September. To change any rule, particularly a rule regarding which applicants get funded for various services, could only add to the instability of the program and unreliability of receiving critical support services in the eyes of

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the too many applicants. Moreover, we have heard from several colleagues in the states who are concerned that adopting new rules for internal connections at this juncture could (1) dramatically change the manner in which schools will apply in subsequent years, and (2) affect a large number of their schools that currently have multi-year maintenance contracts for internal connection facilities. Maintenance contracts for their servers, routers, PBX systems, etc., is critical to many current operations.

Information that CCSSO has received to date suggests that an alteration in the funding rules could have negative consequences for many applicants. CCSSO and many state officials recognize that the Commission is raising a valid issue with regard to spreading the E-Rate discounts for internal connections further down the discount matrix and that the time for establishing fair and permanent rules for this program is imminent. However, changes to these priorities which would spread funding to previously unfunded applicants should be made prior to the month of September preceding the funding year in which the changes will take place.

It is our contention that a number of important program policy decisions, including those raised in the NPRM released on April 30, must be considered in the next three months. This should involve rules of priority that recognize and accommodate the rising demand for priority one services. It is highly likely that in program year five sufficient funds for priority one services will not be available if funding demand levels continue to grow at the current pace. Again, we believe that the Commission must have these rules in place before applicants begin submitting their Form 470s, which is September 2001.

Discussion:

School and library applicants presumed that the Administrator would eventually discover that sufficient funds would be available to cover their funding requests for Internet and telecommunications services and that the remaining funds would be directed to applications having the highest discount rating. The intent of the law is that applicants having the "greatest need" i.e., those serving very low-income communities, would receive the highest consideration. At this juncture, redefining the "neediest applicants" on the basis of what schools and libraries may have received in the way of support last year seems unwarranted and unfair. Clearly, no alternative the Commission considers under the present funding cap this year or in the future will satisfy the demand of eligible applications. A cap on the total of fees authorized by Section 254(h) of the 1996 Telecommunications Act ["Act"] which represents a diminishing source of funds for eligible applications is the dilemma that the Commission must address.

The Act specified: "There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service." Moreover, the Act approved fees collected for connecting "classrooms" and for services that "are essential for education." Setting a limit on collected fees that virtually obviate internal connections support for a majority of applicants each and every year seems to violate the intent of the Act. Basically, we accept the finding in a report by Andrew Trotter in a recent issue of Education Week: "Having prior recipients sit out for a year of

funding for internal connections could hurt schools or districts that have multi year contracts to install infrastructure.”

Rather than presenting an option for changing the rules midstream which perpetuates an inequitable situation, CCSSO suggests the Commission should attempt to reduce the level of uncertainty that exists and adhere to the guiding principles of universal service and supporting telecommunications services for schools and libraries that are critical to their operation and viability. Moreover, as indicated by the report released by the Administrator of the Program (posted on the SLD/USAC Web-site on May 18, 2001), there are too many uncertainties to determine which applicants would actually benefit from changes in the funding priorities for internal connections. The figures gathered by the program officials clearly suggest that the “assumptions [associated with proposed changes] may prove to be wrong, even significantly wrong.”

As part of its deliberation on how to most equitably apportion available funds, the Commission should consider allowing the Administrator to draw on the predictable amount of funds that amass each year as a result of faulty demand estimates or from the residual of committed unused funds. In previous comments submitted to the Commission [April 26, 2001 Re: CC Docket No. 96-45, DA 01-975], CCSSO indicated that for a variety of reasons a determinative amount of E-Rate funds are unobligated each and every year. These funds, we suggested, could be placed in escrow, or designated as “recommitted” funds to support “greatest need” applicants in subsequent funding cycles. According to the recent GAO report (GAO-01-672), as of April 2001, \$774 million of committed funds “remain unused.” Thus, it would seem that the Commission could authorize the Administrator to commit a total no less than \$1.15 billion for internal connections in year four, which would at least cover all of the requests at the 90 percent discount level, or perorate requests down to an even lower discount level.

As indicated above, state officials involved in helping applicants to benefit from the universal service discount program are not convinced there is a “best alternative” for reconsidering the funding priorities at this juncture. There is agreement that options involving a “proration of funds” and “a skipping over year-three recipients,” undoubtedly, will have unsatisfactory consequences. The latter, for example, could press schools to complete complex wiring projects within an unrealistic time frame. On the other hand, either of these two options might contribute to inflated requests in subsequent years.

The Commission must consider the fact that school and library applicants are attempting to make their own decision on the basis of three-year educational technology plans, which have been review and approved by a state of independent authority. The Administrator of the program and guidelines developed by the Schools and Libraries Division (SLD/USAC) has placed considerable emphasis on the importance of approved and adopted applicant plans, which incorporate funds committed by local and state agencies. The decisions and obligations associated with these plans should also be among the factors considered for changing the program’s funding priorities at this date and in an arbitrary manner. CCSSO is concerned that some of the poorest school applicants who are able to receive support for internal connection on alternate years may be forced to suspend

their maintenance contracts on the odd years. Directing the funds for “priority two” to the applications serving poorest communities, even at a prorated discount level, may represent the best alternative. A relatively small pro rata portion of support to a high-discount applicant could have a significant effect on sustaining the quality of current services.

CCSSO supports the Commission’s decision to modify its rules to provide additional time for recipients under the schools and libraries universal services support program to implement contracts or agreements with service providers for non-recurring services. We recommend a permanent extension of the date for completing internal connections. For applicants that receive their funding in the normal period of funding waves, i.e., prior to the end of the calendar year, a deadline of September 30 in the following year seems appropriate. At the outset, an applicant institution should understand that it will be allowed to complete the work for nonrecurring, internal connections on or prior to September 30 of the subsequent calendar year. Also, a permanent “six-month waiver” or exception to this rule could be given to applicants that may receive a notice of a successful appeal decision. For example, an applicant that receives a funding notice on March 31 should understand that it has until August 31 of that year for completing non-recurring, internal connections contractual work.

Summary:

CCSSO recommends no changes in the funding priorities for internal connections at this time. Moreover, we suggest the Commission should anticipate establishing rules and priorities for allocating the funds to categories of applicants well in advance of the opening of the application window for each and every subsequent year. The Commission should recognize that the rules will influence how an applicant applies for internal connections projects. An applicant that may qualify for 90 percent discount for internal connections support should be in a position to consider the implications of undertaking a large project over a span of one, two or several years. CCSSO supports the Commission’s proposal to establish a permanent extension of the date for completing internal connections.

The Council of Chief State School Offices looks forward to working with the Chairman and with the new Commissioners to ensure that the nation’s schools and libraries have the capacity to access and use the Internet and web-based services. In spite of the arguments that tend to denigrate the importance of this program, it is contributing to the transformation and viability of the nation’s public and private educational enterprise.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Ambach", written over a horizontal line.

Gordon M. Ambach
Executive Director

Copies of the foregoing letter have been sent via messenger and/or first-class mail to the parties below:

Michael K. Powell
Chairman
Federal Communications Commission
The Portals, 445 Twelfth St., SW
Washington, DC 20554

Harold Furchgott-Roth
Commissioner
Federal Communications Commission
The Portals, 445 Twelfth St., SW
Washington, DC 20554

Gloria Tristani
Commissioner
Federal Communications Commission
The Portals, 445 Twelfth St., SW
Washington, DC 20554

Susan Ness
Commissioner
Federal Communications Commission
The Portals, 445 Twelfth St., SW
Washington, DC 20554

Peter A. Tenhula
Senior Legal Advisor to the Chairman
Office of the Chairman, Room 8-B 201
Federal Communications Commission
The Portals, 445 Twelfth St., SW
Washington, DC 20554

Carol Matthey
Deputy Chief
Common Carrier Bureau
Federal Communications Commission
The Portals, 445 Twelfth St., SW
Washington, DC 20554

Mark Seifert
Deputy Chief
Accounting Policy Division
Common Carrier Bureau
Federal Communications Commission
The Portals, 445 Twelfth St., SW
Washington, DC 20554

Ellen Blackler
Special Assistant
Common Carrier Bureau
Federal Communications Commission
The Portals, 445 Twelfth St., SW
Washington, DC 20554

Narda M. Jones
Common Carrier Bureau
Federal Communications Commission
The Portals, 445 Twelfth St., SW
Washington, DC 20554

Cheryl Parrino, CEO
Universal Service
Administrative Company
2120 L Street, NW Suite 600
Washington, DC 20037

Kate Moore
President
Schools and Libraries Division, USAC
2120 L Street, NW Suite 600
Washington, DC 20037

(a) To demonstrate the ability to meet the financial requirements, a private insurance company wishing to enter or reenter the WYO program must:

- (1) Be a licensed property insurance company;
- (2) Have a five (5) year history of writing property insurance;
- (3) Disclose any legal proceedings, suspensions, judgments, settlements, or agreements reached with any State insurance department, State attorney general, State corporation commission, or the Federal Government during the immediately prior five (5) years regarding the company's business practices;

(4) Submit its most recent National Association of Insurance Commissioners (NAIC) annual statement;

(5) Submit, as data become available, information to indicate that the company meets or exceeds NAIC standards for risk-based capital and surplus; and

(6) Submit its last State or regional audit, which should contain no material negative findings.

(b) To demonstrate the ability to meet the financial requirements, an association of local governments, or a State municipal league-sponsored intergovernmental risk-sharing pool for covering public entity structures, wishing to enter the WYO pilot program commencing on October 1, 2001, must:

(1) Have authority by a State to provide property coverage to its members;

(2) Have a five (5) year history of writing property coverage;

(3) Disclose any legal proceedings, suspensions, judgments, settlements, or agreements reached with any State insurance department, State attorney general, State corporation commission, or the Federal Government during the immediate prior five (5) years regarding the company's business practices; and

(4) Submit its most recent two annual audits from an independent accounting firm performed in compliance with generally accepted accounting principles that show no material negative findings; and submit, as data become available, information to indicate that the association or the pool meets or exceeds standards comparable to those of the NAIC for risk-based capital and surplus.

(c) An applicant for entry or reentry in the WYO program must also pass a test to determine the applicant's ability to process flood insurance and meet the Transaction Record Reporting and Processing (TRRP) Plan requirements of the WYO Financial Control Plan. Unless the test requirement is waived, e.g., where the applicant's reporting

requirements will be fulfilled by an already qualified performer, the applicant must prepare and submit test output monthly tape(s) and monthly financial statements and reconciliations for processing by the NFIP Bureau and Statistical Agent contractor. For test purposes, no error tolerance will be allowed. If the applicant fails the initial test, a second test will be run, which the applicant must pass to participate in the Program.

(d) To satisfy the requirement for commitment to Program goals, including marketing of flood insurance policies, the applicant shall submit information concerning the company's plans for the WYO Program including plans for the training and support of producers and staff, marketing plans and sales targets, and claims handling and disaster response plans. Applicants must also identify those aspects of their planned flood insurance operations to be performed by another organization, managing agent, another WYO Company, a WYO vendor, a service bureau or related organization.

Applicants shall also name, in addition to a Principal Coordinator, a corporate officer point of contact—an individual, e.g., at the level of Senior Executive Vice President, who reports directly to the Chief Executive Officer or the Chief Operating Officer. Each applicant shall furnish the latest available information regarding the number of its fire, allied lines, farmowners multiple peril, homeowners multiple peril, and commercial multiple peril policies in force, by line. A private insurance company applying for participation in the WYO program shall also furnish its Best's Financial Size Category for the purpose of setting marketing goals.

Appendix A to Part 62 [Amended]

3. Add the following ADDENDUM at the end of Appendix A to Part 62:

* * * * *

Addendum to Appendix A to Part 62— Federal Emergency Management Agency, Federal Insurance Administration, Financial Assistance/ Subsidy Arrangement

Note: This Addendum to Appendix A to Part 62 applies only to public entity insurers participating in the pilot project established in § 62.24(b) that permits State municipal league-sponsored intergovernmental risk-sharing pools to provide flood insurance to public entities to cover public buildings.

"Company" in the preceding Arrangement includes "public entity insurer."

The references to "marketing guidelines" in Article II—Undertaking of the Company and to "marketing goals" in Article III—Loss Costs, Expenses, Expense Reimbursement,

and Premium Refunds shall apply only to the private insurance companies participating in the WYO program.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: May 1, 2001.

Howard Leikin,

Acting Administrator, Federal Insurance Administration.

[FR Doc. 01-11364 Filed 5-7-01; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96-45, FCC 01-143]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule.

SUMMARY: In this document, the Commission proposes a revised method for allocating discounts to schools and libraries under the federal universal service mechanism when there is insufficient funding to support all requests for internal connections. The Commission also seeks comment on proposed administrative modifications to our rules to provide additional time for recipients under the schools and libraries universal service support mechanism to implement contracts or agreements with service providers for non-recurring services.

DATES: Comments are due on or before May 23, 2001. Reply comments are due on or before May 30, 2001.

ADDRESSES: All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. Parties should also send three paper copies of their filings to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Room 5-B540, Washington, D.C. 20554. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Room 5-B540, Washington, D.C. 20554. The diskette should be clearly labeled with the commenter's name, proceeding, including the lead docket number in the proceeding (CC Docket No. 96-45), type

of pleading (comment or reply comment), date of submission, and the name of the electronic file on diskette. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: Katherine Tofigh, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418-7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in CC Docket No. 96-45 released on April 30, 2001. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 Twelfth Street, S.W., Washington, D.C., 20554.

I. Introduction

1. The Commission's rules require schools and libraries to implement services for which discounts have been committed by the Administrator within the funding year for which the discounts were sought. The Commission's May 8, 1997, *Universal Service Order*, 62 FR 32862 (June 17, 1997), established a calendar funding year (January 1—December 31) for schools and libraries receiving universal service support. On September 10, 1997, the Common Carrier Bureau released a *Public Notice*, 62 FR 48280, September 15, 1997, seeking comment on Universal Service Support Distribution Options for School, Libraries, and Rural Health Care Providers. The Commission subsequently issued its *Fifth Reconsideration Order*, 63 FR 38089, July 15, 1998, which changed the funding year for schools and libraries support to a fiscal year (July 1—June 30).

2. In the *Tenth Reconsideration Order*, 64 FR 22806, April 28, 1999, the Commission extended the deadline for schools and libraries to use their discounts on non-recurring services from June 30, 1999 to September 30, 1999, which allowed schools and libraries to implement non-recurring services in the summer months, when schools were in recess. On May 4, 2000, the Common Carrier Bureau (Bureau) extended the Year 2 deadline for schools and libraries to use their discounts on non-recurring services from June 30, 2000 (the end of the funding period) to September 30, 2000.

3. In this Further Notice of Proposed Rulemaking (FNPRM), we propose a revised method for allocating discounts to schools and libraries under the federal universal service mechanism

when there is insufficient funding to support all requests for internal connections. Specifically, we seek comment on a proposed rule change to give funding priority to requests for internal connections made by individual schools and libraries that did not receive funding commitments for internal connections during the previous funding year. With many schools and libraries having already benefited from several years of discounts for internal connections under the existing mechanism, we conclude that it is appropriate to reconsider the rules of priority to ensure that discounts continue to go to those most in need.

4. We also seek comment on proposed administrative modifications to our rules to provide additional time for recipients under the schools and libraries universal service support mechanism to implement contracts or agreements with service providers for non-recurring services. First, we propose to extend the deadline for receipt of non-recurring services from June 30, to September 30 following the close of the funding year. Second, we propose to establish a deadline for the implementation of non-recurring services for certain qualified applicants who are unable to complete implementation by the September 30 deadline. These minor administrative modifications should provide applicants with greater flexibility without compromising program integrity. Finally, on our own motion, we waive the June 30, 2001 deadline for implementation of non-recurring services for all Funding Year 3 applicants and extend the deadline to September 30, 2001.

II. Discussion

A. Funding Priority for Internal Connections

5. The Commission did not envision demand for the schools and libraries universal service support mechanism at the level we are currently experiencing. In the *Fifth Order on Reconsideration*, and the *Eleventh Order on Reconsideration*, 64 FR 33785, June 24, 1999, the Commission anticipated that the fund would provide full support for telecommunications services and Internet access, and would provide support for internal connections for the neediest applicants. In Funding Year 4, however, the Administrator estimates that there will not be enough funding for the neediest applicants, who are eligible for a 90 percent discount. The Commission is committed to ensuring that discounts under this support

mechanism are targeted to the schools and libraries with the greatest need. Therefore, we believe it is appropriate to reconsider the Commission's rules of priority to ensure that support goes to the neediest applicants. The Commission seeks comments on two options, relating to the distribution of support for internal connections. The first option would be to maintain the Commission's rules as currently written, which direct that the remaining funds be prorated by discount band. The second option would be to give funding priority to requests for internal connections made by individual schools and libraries that did not receive funding commitments for internal connections during the previous funding year.

6. Our current rules require that the Administrator allocate the available funds among applicants in the 90 percent discount level on a pro rata basis, so that each applicant would receive only a portion of the amount requested. The Commission has several concerns about the application of the current rules of priority. If applicants were to receive only a pro rata portion of the support they requested, schools and libraries might not receive sufficient funding to permit completion of a useful system of internal connections. As a result, schools and libraries would be in a position of hiring contractors to perform only a portion of an internal connection project. It is possible that some schools may be unable to complete even part of their internal connection project, because they are unable to finance the additional funding burden. The Commission is also concerned that applicants eligible for 90 percent discounts could receive funding commitments on internal connections for two years in a row, while other schools that are also economically disadvantaged, albeit not to the same degree, could receive no discounts at all. Therefore, some needy schools will get no support, while others receive support for several consecutive years. In light of these concerns, we seek comment on whether we should keep the funding priority rules without modification.

7. The Commission proposes and seeks comment on a second option. For each funding year, starting with Funding Year 4, funding priority would be given to requests for internal connections made by individual schools and libraries that did not receive funding commitments for internal connections during the previous funding year in order of discount level. Specifically, for both shared services and site-specific services, the

Administrator would examine each application to determine which individual sites within that application had not received funding for internal connections in the prior funding year. These individual sites would be funded in order of discount level. We seek comment on this proposal.

8. By adopting the proposed rule change, we would be able to fund requests for internal connections from many needy schools and libraries that did not receive funding in the previous funding year. As a result, we would be able to better target discounts to schools and libraries that are more in need of discounts. We tentatively conclude that this approach would be more consistent with the Commission's commitment to ensuring that discounts under this support mechanism are targeted to the schools and libraries with the greatest need. While we recognize that some applicants' requests would not be funded during the current funding year, those applicants could apply for discounts for internal connections during the following funding year. We also note that the rule change could be implemented with relative ease, because little or no additional information would be necessary from the applicants. Currently, the necessary information relating to individual schools and libraries is collected as part of Item 22 of the applicant's FCC Form 471.

B. Modification of Implementation Schedule for Non-Recurring Services

9. We also propose to revise the Commission's rules relating to the implementation of non-recurring services. In doing so, we note that we have found it necessary to waive the implementation deadline for nonrecurring services for Funding Years 1 and 2. We again find it necessary to waive that rule for Funding Year 3. As noted by the Court of Appeals for the D.C. Circuit, agency rules are presumed valid. The Commission's rules, however, may be waived for good cause shown, where the particular facts make strict compliance inconsistent with the public interest. Waiver of the deadline for implementation of non-recurring services is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation would serve the public interest.

10. Currently, the Commission's rules require schools and libraries to implement services for which discounts have been committed by the Administrator within the funding year the discounts were granted. In Funding Years 1 and 2, we found it necessary to extend this service implementation

deadline from June 30 to September 30, thereby allowing schools and libraries to implement non-recurring services in the summer months, when schools were in recess. We find that many schools and libraries have been unable to meet the June 30 implementation deadline in previous years due to a variety of reasons, including delays in funding commitments and events beyond the service provider's control, such as manufacturing delays and natural disasters. For these reasons, we find good cause to waive, on our own motion, the June 30, 2001 deadline for implementation of non-recurring services for all Funding Year 3 applicants and extend the deadline to September 30, 2001.

11. We conclude that the public interest is best served if all schools and libraries receiving Funding Year 3 discounts on non-recurring services have the benefit of an extension of the deadline. Similar to the Commission's actions in Funding Year 1 and Funding Year 2, we also grant Funding Year 3 applicants a limited exemption from the Commission's competitive bidding requirements. Contracts for non-recurring services approved for Funding Year 3 discounts may be voluntarily extended until September 30, 2001.

12. Based on this record that has necessitated extensions during the last three funding years, we propose to modify our rules relating to the use of funds for non-recurring services. We tentatively conclude that it is appropriate for schools and libraries to have the flexibility of additional time to implement non-recurring services. We propose a rule change that would allow schools and libraries to implement non-recurring services by September 30, following the close of the funding year. We seek comment on this proposal.

13. For certain qualified applicants who are unable to meet the September 30 deadline, we propose to extend the deadline for implementation of non-recurring services. Specifically, we propose to implement a rule to permit qualified applicants to extend the deadline for implementation of non-recurring services if they satisfy one of the following proposed criteria: applicants whose funding commitment decision letters were issued by the Administrator on or after March 1 of the funding year; applicants who received service provider change authorizations or service substitution authorizations from the Administrator on or after March 1 of the funding year; applicants whose service providers were unable to complete implementation for reasons beyond the service provider's control; or applicants who have their funding

disbursements delayed while the Administrator investigates their application for program compliance. Under the proposed rule, if one of the conditions was satisfied before March 1, they would have until the subsequent September 30 to complete implementation. If one of the conditions was satisfied after March 1, applicants would have until September 30 of the following year to complete implementation. We seek comment on this proposal.

14. As noted, in each year of the program, the Commission has ordered a waiver of its rules and extended the deadline for receipt of non-recurring services. Changing the deadline would provide schools and libraries, as well as the Administrator, with the certainty of a deadline that experience has shown is more realistic, based on the needs of the various program participants. We tentatively conclude that the proposed rule change provides clarity to the Administrator and applicants by establishing a deadline for implementation of non-recurring services for schools and libraries that are unable to meet the original deadline due to circumstances beyond their control. Implementation of this policy should ensure schools and libraries are not penalized when they are not responsible for missing the installation deadline. Ultimately, these administrative modifications to the rules should allow all schools and libraries to schedule implementation of non-recurring services over the summer months.

15. In addition, we also propose to grant a limited extension of the Commission's competitive bidding rules for contracts for non-recurring services. Under this proposal, contracts for non-recurring services could be voluntarily extended to coincide with the appropriate deadline for implementation. Parties would not, however, be able to extend other contractual provisions beyond the dates established by the Commission's rules without complying with the competitive bidding process. We seek comment on this proposal.

III. Procedural Matters

A. Initial Regulatory Flexibility Analysis

16. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this FNPRM. Written public comments are requested on this IRFA. Comments must be identified as

responses to the IRFA and must be filed by the deadlines for comments on the FNPRM provided. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Rules

17. In this FNPRM, we propose a revised method for allocating discounts to schools and libraries under the federal universal service mechanism when there is insufficient funding to support all requests for internal connections. Specifically, we seek comment on a proposed rule change to give funding priority to requests for internal connections made by individual schools and libraries that did not receive funding commitments for internal connections during the previous funding year.

18. We also seek comment on proposed administrative modifications to our rules to provide additional time for recipients under the schools and libraries universal service support mechanism to implement contracts or agreements with service providers for non-recurring services. First, we propose to extend the deadline for receipt of non-recurring services from June 30, to September 30 following the close of the funding year. Second, we propose to establish a deadline for the implementation of non-recurring services for certain qualified applicants who are unable to complete implementation by the September 30 deadline.

2. Legal Basis

19. The legal basis for this FNPRM is contained in sections 1 through 4, 201 through 205, 254, 303(r), and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, and § 1.411 of the Commission's rules.

3. Description and Estimate of the Number of Small Entities To Which Rules Will Apply

20. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning

as the term "small business concern" under the Small Business Act. A small business concern is one that: Is independently owned and operated; is not dominant in its field of operation; and satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96 percent) are small entities.

21. Under the schools and libraries universal service support mechanism, which provides support for elementary and secondary schools and libraries, an elementary school is generally "a non-profit institutional day or residential school that provides elementary education, as determined under state law." A secondary school is generally as "a non-profit institutional day or residential school that provides secondary education, as determined under state law," and not offering education beyond grade 12. For-profit schools and libraries, and schools and libraries with endowments in excess of \$50,000,000, are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools. Certain other statutory definitions apply as well. The SBA has defined as small entities elementary and secondary schools and libraries having \$5 million or less in annual receipts. In funding year 2 (July 1, 1999 to June 30, 2000) approximately 83,700 schools and 9,000 libraries received funding under the schools and libraries universal service mechanism. Although we are unable to estimate with precision the number of these entities that would qualify as small entities under SBA's definition, we estimate that fewer than 83,700 schools and 9,000 libraries would be affected annually by the rules proposed in this FNPRM, under current operation of the program.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

22. The measures under consideration in this FNPRM would, if adopted, result in no additional reporting.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

23. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): The establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; the use of performance, rather than design, standards; and an exemption from coverage of the rule, or part thereof, for small entities.

24. The Commission seeks comment on two alternatives relating to the allocation of discounts to schools and libraries under the federal universal service mechanism when there is insufficient funding to support all requests for internal connections. Under the Commission's current rules, the Administrator would allocate the available funds among applicants in the 90 percent discount level on a pro rata basis, so that each applicant would receive only a portion of the amount requested. If applicants were to receive only a pro rata portion of the support they requested, we are concerned that less affluent schools and libraries would be unable to finance the additional funding burden. We seek to minimize the impact on schools and libraries with less resources and propose to give funding priority to requests for internal connections made by individual schools and libraries that did not receive funding commitments for internal connections during the previous funding year.

25. In addition, the Commission seeks comments on two proposals relating to the deadline for implementation of non-recurring services. First, the Commission proposes to extend the deadline for implementation of non-recurring services from June 30 of each funding year to September 30. Second, the Commission proposes to establish an extended deadline for certain qualified applicants who are unable to meet the September 30 deadline. Under these proposals, we aim to provide schools and libraries with additional

time to complete installation and minimize the harm that may affect small entities due to the shorter deadline.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

26. None.

B. Comment Due Dates and Filing Procedures

27. We invite comment on the issues and questions set forth in the FNPRM of Proposed Rulemaking and Initial Regulatory Flexibility Analysis contained herein. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may comment on or before May 23, 2001, and reply comment on or before May 30, 2001. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24,121, May 1, 1998.

V. Ordering Clauses

28. Pursuant to the authority contained in sections 1-4, 201-205, 254, 303(r), and 403 of the Communications Act of 1934, as amended, and §§ 0.91, 0.291, 1.3, and 1.411 of the Commission's rules, this Further Notice of Proposed Rulemaking and Order is adopted.

29. The deadline for the implementation of non-recurring services in Funding Year 3 of the schools and libraries universal support mechanism for all applicants is extended from June 30, 2001 to September 30, 2001.

30. Applicants in Funding Year 3 may extend existing contracts for non-recurring services until September 30, 2001, without having to comply with the Commission's competitive bidding requirements.

31. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Further Notice of Proposed Rulemaking and Order, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission

Magalie Roman Salas,

Secretary.

[FR Doc. 01-11514 Filed 5-7-01; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 26

[Docket OST-2000-7639]

RIN 2105-AC88

Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs; Memorandum of Understanding With the Small Business Administration; Uniform Forms and Other Revisions

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Transportation (DOT or the Department) is proposing revisions to the Department's regulations for its Disadvantaged Business Enterprise (DBE) program (49 CFR part 26). In its final DBE rule the Department reserved publication of a uniform reporting form and a uniform certification application form for a later date. This document proposes those forms. In addition, this document proposes implementation procedures for a Memorandum of Understanding (MOU) between DOT and the U.S. Small Business Administration (SBA). The MOU streamlines certification procedures for participation in SBA's 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs, and DOT's DBE program for small and disadvantaged businesses. Finally, this document proposes substantive changes to several provisions, including: Personal net worth, retainage, the size standard, proof of ethnicity, confidentiality, proof of economic disadvantage, and DBE credit for trucking firms.

DATES: Comments should be received no later than June 7, 2001. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Interested persons should send comments to Docket Clerk, Docket No. OST-2000-7639, Department of Transportation, 400 7th Street, SW., Room PL-401, Washington, DC 20590. We request that, in order to minimize burdens on the docket clerk's staff, commenters send three copies of their comments to the docket. Commenters wishing to have their submissions acknowledged should include a stamped, self-addressed postcard with their comments. The docket clerk will date stamp the postcard and return it to the commenter. Comments will be available for inspection at the above

address from 10:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Laura A. Aguilar, Attorney, Office of Environmental, Civil Rights, and General Law, Department of Transportation, 400 7th Street, SW., Room 10102, Washington, DC 20590, phone numbers (202) 366-0365 (voice), (202) 366-9170 (fax), (202) 755-7687 (TDD), laura.aguilar@ost.dot.gov (e-mail).

SUPPLEMENTARY INFORMATION:

Background

On February 2, 1999, the Department published a final rule revising its Disadvantaged Business Enterprise (DBE) program. The new regulations (49 CFR part 26) replaced 49 CFR part 23, except for the airport concessions regulations. In shaping the final rule, the Department responded to 600 comments on its December 1992 Notice of Proposed Rulemaking (NPRM), and 300 comments on its May 1997 Supplemental Notice of Proposed Rulemaking (SNPRM). The Department also participated in the Clinton Administration's review of affirmative action programs and listened carefully to Congressional debate during the reauthorization of the Department's DBE program in the Transportation Equity for the 21st Century (TEA-21). The final rule also incorporates requirements set forth in the Supreme Court's June 1995 decision in *Adarand v. Peña*. The result is a narrowly tailored program that provides a "level playing field" for small socially and economically disadvantaged businesses.

There are three different parts addressed in this document. The first part addresses uniform forms. In the final rule, the Department stated that it would develop a single reporting form and a standard DOT application form for DBE eligibility. The Department did not want to delay the issuance of the final rule, so it reserved the date on which the uniform form requirements would go into effect. This document addresses both of these forms. The second part addresses the implementation of a Memorandum of Understanding (MOU) between the DOT and the Small Business Administration (SBA). The MOU streamlines certification procedures for participation in SBA's 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs and DOT's DBE program. The final part proposes substantive changes to several provisions, including: personal net worth, retainage, proof of ethnicity,

(a) To demonstrate the ability to meet the financial requirements, a private insurance company wishing to enter or reenter the WYO program must:

- (1) Be a licensed property insurance company;
- (2) Have a five (5) year history of writing property insurance;
- (3) Disclose any legal proceedings, suspensions, judgments, settlements, or agreements reached with any State insurance department, State attorney general, State corporation commission, or the Federal Government during the immediately prior five (5) years regarding the company's business practices;

(4) Submit its most recent National Association of Insurance Commissioners (NAIC) annual statement;

(5) Submit, as data become available, information to indicate that the company meets or exceeds NAIC standards for risk-based capital and surplus; and

(6) Submit its last State or regional audit, which should contain no material negative findings.

(b) To demonstrate the ability to meet the financial requirements, an association of local governments, or a State municipal league-sponsored intergovernmental risk-sharing pool for covering public entity structures, wishing to enter the WYO pilot program commencing on October 1, 2001, must:

(1) Have authority by a State to provide property coverage to its members;

(2) Have a five (5) year history of writing property coverage;

(3) Disclose any legal proceedings, suspensions, judgments, settlements, or agreements reached with any State insurance department, State attorney general, State corporation commission, or the Federal Government during the immediate prior five (5) years regarding the company's business practices; and

(4) Submit its most recent two annual audits from an independent accounting firm performed in compliance with generally accepted accounting principles that show no material negative findings; and submit, as data become available, information to indicate that the association or the pool meets or exceeds standards comparable to those of the NAIC for risk-based capital and surplus.

(c) An applicant for entry or reentry in the WYO program must also pass a test to determine the applicant's ability to process flood insurance and meet the Transaction Record Reporting and Processing (TRRP) Plan requirements of the WYO Financial Control Plan. Unless the test requirement is waived, *e.g.*, where the applicant's reporting

requirements will be fulfilled by an already qualified performer, the applicant must prepare and submit test output monthly tape(s) and monthly financial statements and reconciliations for processing by the NFIP Bureau and Statistical Agent contractor. For test purposes, no error tolerance will be allowed. If the applicant fails the initial test, a second test will be run, which the applicant must pass to participate in the Program.

(d) To satisfy the requirement for commitment to Program goals, including marketing of flood insurance policies, the applicant shall submit information concerning the company's plans for the WYO Program including plans for the training and support of producers and staff, marketing plans and sales targets, and claims handling and disaster response plans. Applicants must also identify those aspects of their planned flood insurance operations to be performed by another organization, managing agent, another WYO Company, a WYO vendor, a service bureau or related organization.

Applicants shall also name, in addition to a Principal Coordinator, a corporate officer point of contact—an individual, *e.g.*, at the level of Senior Executive Vice President, who reports directly to the Chief Executive Officer or the Chief Operating Officer. Each applicant shall furnish the latest available information regarding the number of its fire, allied lines, farmowners multiple peril, homeowners multiple peril, and commercial multiple peril policies in force, by line. A private insurance company applying for participation in the WYO program shall also furnish its Best's Financial Size Category for the purpose of setting marketing goals.

Appendix A to Part 62 [Amended]

3. Add the following ADDENDUM at the end of Appendix A to Part 62:

* * * * *

Addendum to Appendix A to Part 62— Federal Emergency Management Agency, Federal Insurance Administration, Financial Assistance/ Subsidy Arrangement

Note: This Addendum to Appendix A to Part 62 applies only to public entity insurers participating in the pilot project established in § 62.24(b) that permits State municipal league-sponsored intergovernmental risk-sharing pools to provide flood insurance to public entities to cover public buildings.

"Company" in the preceding Arrangement includes "public entity insurer."

The references to "marketing guidelines" in Article II—Undertaking of the Company and to "marketing goals" in Article III—Loss Costs, Expenses, Expense Reimbursement,

and Premium Refunds shall apply only to the private insurance companies participating in the WYO program.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: May 1, 2001.

Howard Leikin,

Acting Administrator, Federal Insurance Administration.

[FR Doc. 01-11364 Filed 5-7-01; 8:45 am]

BILLING CODE 6718-03-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96-45, FCC 01-143]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule.

SUMMARY: In this document, the Commission proposes a revised method for allocating discounts to schools and libraries under the federal universal service mechanism when there is insufficient funding to support all requests for internal connections. The Commission also seeks comment on proposed administrative modifications to our rules to provide additional time for recipients under the schools and libraries universal service support mechanism to implement contracts or agreements with service providers for non-recurring services.

DATES: Comments are due on or before May 23, 2001. Reply comments are due on or before May 30, 2001.

ADDRESSES: All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. Parties should also send three paper copies of their filings to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Room 5-B540, Washington, D.C. 20554. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Room 5-B540, Washington, D.C. 20554. The diskette should be clearly labeled with the commenter's name, proceeding, including the lead docket number in the proceeding (CC Docket No. 96-45), type

of pleading (comment or reply comment), date of submission, and the name of the electronic file on diskette. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT:

Katherine Tofigh, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418-7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in CC Docket No. 96-45 released on April 30, 2001. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 Twelfth Street, S.W., Washington, D.C., 20554.

I. Introduction

1. The Commission's rules require schools and libraries to implement services for which discounts have been committed by the Administrator within the funding year for which the discounts were sought. The Commission's May 8, 1997, *Universal Service Order*, 62 FR 32862 (June 17, 1997), established a calendar funding year (January 1—December 31) for schools and libraries receiving universal service support. On September 10, 1997, the Common Carrier Bureau released a *Public Notice*, 62 FR 48280, September 15, 1997, seeking comment on Universal Service Support Distribution Options for School, Libraries, and Rural Health Care Providers. The Commission subsequently issued its *Fifth Reconsideration Order*, 63 FR 38089, July 15, 1998, which changed the funding year for schools and libraries support to a fiscal year (July 1—June 30).

2. In the *Tenth Reconsideration Order*, 64 FR 22806, April 28, 1999, the Commission extended the deadline for schools and libraries to use their discounts on non-recurring services from June 30, 1999 to September 30, 1999, which allowed schools and libraries to implement non-recurring services in the summer months, when schools were in recess. On May 4, 2000, the Common Carrier Bureau (Bureau) extended the Year 2 deadline for schools and libraries to use their discounts on non-recurring services from June 30, 2000 (the end of the funding period) to September 30, 2000.

3. In this Further Notice of Proposed Rulemaking (FNPRM), we propose a revised method for allocating discounts to schools and libraries under the federal universal service mechanism

when there is insufficient funding to support all requests for internal connections. Specifically, we seek comment on a proposed rule change to give funding priority to requests for internal connections made by individual schools and libraries that did not receive funding commitments for internal connections during the previous funding year. With many schools and libraries having already benefited from several years of discounts for internal connections under the existing mechanism, we conclude that it is appropriate to reconsider the rules of priority to ensure that discounts continue to go to those most in need.

4. We also seek comment on proposed administrative modifications to our rules to provide additional time for recipients under the schools and libraries universal service support mechanism to implement contracts or agreements with service providers for non-recurring services. First, we propose to extend the deadline for receipt of non-recurring services from June 30, to September 30 following the close of the funding year. Second, we propose to establish a deadline for the implementation of non-recurring services for certain qualified applicants who are unable to complete implementation by the September 30 deadline. These minor administrative modifications should provide applicants with greater flexibility without compromising program integrity. Finally, on our own motion, we waive the June 30, 2001 deadline for implementation of non-recurring services for all Funding Year 3 applicants and extend the deadline to September 30, 2001.

II. Discussion

A. Funding Priority for Internal Connections

5. The Commission did not envision demand for the schools and libraries universal service support mechanism at the level we are currently experiencing. In the *Fifth Order on Reconsideration*, and the *Eleventh Order on Reconsideration*, 64 FR 33785, June 24, 1999, the Commission anticipated that the fund would provide full support for telecommunications services and Internet access, and would provide support for internal connections for the neediest applicants. In Funding Year 4, however, the Administrator estimates that there will not be enough funding for the neediest applicants, who are eligible for a 90 percent discount. The Commission is committed to ensuring that discounts under this support

mechanism are targeted to the schools and libraries with the greatest need. Therefore, we believe it is appropriate to reconsider the Commission's rules of priority to ensure that support goes to the neediest applicants. The Commission seeks comments on two options, relating to the distribution of support for internal connections. The first option would be to maintain the Commission's rules as currently written, which direct that the remaining funds be prorated by discount band. The second option would be to give funding priority to requests for internal connections made by individual schools and libraries that did not receive funding commitments for internal connections during the previous funding year.

6. Our current rules require that the Administrator allocate the available funds among applicants in the 90 percent discount level on a pro rata basis, so that each applicant would receive only a portion of the amount requested. The Commission has several concerns about the application of the current rules of priority. If applicants were to receive only a pro rata portion of the support they requested, schools and libraries might not receive sufficient funding to permit completion of a useful system of internal connections. As a result, schools and libraries would be in a position of hiring contractors to perform only a portion of an internal connection project. It is possible that some schools may be unable to complete even part of their internal connection project, because they are unable to finance the additional funding burden. The Commission is also concerned that applicants eligible for 90 percent discounts could receive funding commitments on internal connections for two years in a row, while other schools that are also economically disadvantaged, albeit not to the same degree, could receive no discounts at all. Therefore, some needy schools will get no support, while others receive support for several consecutive years. In light of these concerns, we seek comment on whether we should keep the funding priority rules without modification.

7. The Commission proposes and seeks comment on a second option. For each funding year, starting with Funding Year 4, funding priority would be given to requests for internal connections made by individual schools and libraries that did not receive funding commitments for internal connections during the previous funding year in order of discount level. Specifically, for both shared services and site-specific services, the

Administrator would examine each application to determine which individual sites within that application had not received funding for internal connections in the prior funding year. These individual sites would be funded in order of discount level. We seek comment on this proposal.

8. By adopting the proposed rule change, we would be able to fund requests for internal connections from many needy schools and libraries that did not receive funding in the previous funding year. As a result, we would be able to better target discounts to schools and libraries that are more in need of discounts. We tentatively conclude that this approach would be more consistent with the Commission's commitment to ensuring that discounts under this support mechanism are targeted to the schools and libraries with the greatest need. While we recognize that some applicants' requests would not be funded during the current funding year, those applicants could apply for discounts for internal connections during the following funding year. We also note that the rule change could be implemented with relative ease, because little or no additional information would be necessary from the applicants. Currently, the necessary information relating to individual schools and libraries is collected as part of Item 22 of the applicant's FCC Form 471.

B. Modification of Implementation Schedule for Non-Recurring Services

9. We also propose to revise the Commission's rules relating to the implementation of non-recurring services. In doing so, we note that we have found it necessary to waive the implementation deadline for nonrecurring services for Funding Years 1 and 2. We again find it necessary to waive that rule for Funding Year 3. As noted by the Court of Appeals for the D.C. Circuit, agency rules are presumed valid. The Commission's rules, however, may be waived for good cause shown, where the particular facts make strict compliance inconsistent with the public interest. Waiver of the deadline for implementation of non-recurring services is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation would serve the public interest.

10. Currently, the Commission's rules require schools and libraries to implement services for which discounts have been committed by the Administrator within the funding year the discounts were granted. In Funding Years 1 and 2, we found it necessary to extend this service implementation

deadline from June 30 to September 30, thereby allowing schools and libraries to implement non-recurring services in the summer months, when schools were in recess. We find that many schools and libraries have been unable to meet the June 30 implementation deadline in previous years due to a variety of reasons, including delays in funding commitments and events beyond the service provider's control, such as manufacturing delays and natural disasters. For these reasons, we find good cause to waive, on our own motion, the June 30, 2001 deadline for implementation of non-recurring services for all Funding Year 3 applicants and extend the deadline to September 30, 2001.

11. We conclude that the public interest is best served if all schools and libraries receiving Funding Year 3 discounts on non-recurring services have the benefit of an extension of the deadline. Similar to the Commission's actions in Funding Year 1 and Funding Year 2, we also grant Funding Year 3 applicants a limited exemption from the Commission's competitive bidding requirements. Contracts for non-recurring services approved for Funding Year 3 discounts may be voluntarily extended until September 30, 2001.

12. Based on this record that has necessitated extensions during the last three funding years, we propose to modify our rules relating to the use of funds for non-recurring services. We tentatively conclude that it is appropriate for schools and libraries to have the flexibility of additional time to implement non-recurring services. We propose a rule change that would allow schools and libraries to implement non-recurring services by September 30, following the close of the funding year. We seek comment on this proposal.

13. For certain qualified applicants who are unable to meet the September 30 deadline, we propose to extend the deadline for implementation of non-recurring services. Specifically, we propose to implement a rule to permit qualified applicants to extend the deadline for implementation of non-recurring services if they satisfy one of the following proposed criteria: applicants whose funding commitment decision letters were issued by the Administrator on or after March 1 of the funding year; applicants who received service provider change authorizations or service substitution authorizations from the Administrator on or after March 1 of the funding year; applicants whose service providers were unable to complete implementation for reasons beyond the service provider's control; or applicants who have their funding

disbursements delayed while the Administrator investigates their application for program compliance. Under the proposed rule, if one of the conditions was satisfied before March 1, they would have until the subsequent September 30 to complete implementation. If one of the conditions was satisfied after March 1, applicants would have until September 30 of the following year to complete implementation. We seek comment on this proposal.

14. As noted, in each year of the program, the Commission has ordered a waiver of its rules and extended the deadline for receipt of non-recurring services. Changing the deadline would provide schools and libraries, as well as the Administrator, with the certainty of a deadline that experience has shown is more realistic, based on the needs of the various program participants. We tentatively conclude that the proposed rule change provides clarity to the Administrator and applicants by establishing a deadline for implementation of non-recurring services for schools and libraries that are unable to meet the original deadline due to circumstances beyond their control. Implementation of this policy should ensure schools and libraries are not penalized when they are not responsible for missing the installation deadline. Ultimately, these administrative modifications to the rules should allow all schools and libraries to schedule implementation of non-recurring services over the summer months.

15. In addition, we also propose to grant a limited extension of the Commission's competitive bidding rules for contracts for non-recurring services. Under this proposal, contracts for non-recurring services could be voluntarily extended to coincide with the appropriate deadline for implementation. Parties would not, however, be able to extend other contractual provisions beyond the dates established by the Commission's rules without complying with the competitive bidding process. We seek comment on this proposal.

III. Procedural Matters

A. Initial Regulatory Flexibility Analysis

16. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this FNPRM. Written public comments are requested on this IRFA. Comments must be identified as

responses to the IRFA and must be filed by the deadlines for comments on the FNPRM provided. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Rules

17. In this FNPRM, we propose a revised method for allocating discounts to schools and libraries under the federal universal service mechanism when there is insufficient funding to support all requests for internal connections. Specifically, we seek comment on a proposed rule change to give funding priority to requests for internal connections made by individual schools and libraries that did not receive funding commitments for internal connections during the previous funding year.

18. We also seek comment on proposed administrative modifications to our rules to provide additional time for recipients under the schools and libraries universal service support mechanism to implement contracts or agreements with service providers for non-recurring services. First, we propose to extend the deadline for receipt of non-recurring services from June 30, to September 30 following the close of the funding year. Second, we propose to establish a deadline for the implementation of non-recurring services for certain qualified applicants who are unable to complete implementation by the September 30 deadline.

2. Legal Basis

19. The legal basis for this FNPRM is contained in sections 1 through 4, 201 through 205, 254, 303(r), and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, and § 1.411 of the Commission's rules.

3. Description and Estimate of the Number of Small Entities To Which Rules Will Apply

20. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning

as the term "small business concern" under the Small Business Act. A small business concern is one that: Is independently owned and operated; is not dominant in its field of operation; and satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96 percent) are small entities.

21. Under the schools and libraries universal service support mechanism, which provides support for elementary and secondary schools and libraries, an elementary school is generally "a non-profit institutional day or residential school that provides elementary education, as determined under state law." A secondary school is generally as "a non-profit institutional day or residential school that provides secondary education, as determined under state law," and not offering education beyond grade 12. For-profit schools and libraries, and schools and libraries with endowments in excess of \$50,000,000, are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools. Certain other statutory definitions apply as well. The SBA has defined as small entities elementary and secondary schools and libraries having \$5 million or less in annual receipts. In funding year 2 (July 1, 1999 to June 30, 2000) approximately 83,700 schools and 9,000 libraries received funding under the schools and libraries universal service mechanism. Although we are unable to estimate with precision the number of these entities that would qualify as small entities under SBA's definition, we estimate that fewer than 83,700 schools and 9,000 libraries would be affected annually by the rules proposed in this FNPRM, under current operation of the program.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

22. The measures under consideration in this FNPRM would, if adopted, result in no additional reporting.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

23. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): The establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; the use of performance, rather than design, standards; and an exemption from coverage of the rule, or part thereof, for small entities.

24. The Commission seeks comment on two alternatives relating to the allocation of discounts to schools and libraries under the federal universal service mechanism when there is insufficient funding to support all requests for internal connections. Under the Commission's current rules, the Administrator would allocate the available funds among applicants in the 90 percent discount level on a pro rata basis, so that each applicant would receive only a portion of the amount requested. If applicants were to receive only a pro rata portion of the support they requested, we are concerned that less affluent schools and libraries would be unable to finance the additional funding burden. We seek to minimize the impact on schools and libraries with less resources and propose to give funding priority to requests for internal connections made by individual schools and libraries that did not receive funding commitments for internal connections during the previous funding year.

25. In addition, the Commission seeks comments on two proposals relating to the deadline for implementation of non-recurring services. First, the Commission proposes to extend the deadline for implementation of non-recurring services from June 30 of each funding year to September 30. Second, the Commission proposes to establish an extended deadline for certain qualified applicants who are unable to meet the September 30 deadline. Under these proposals, we aim to provide schools and libraries with additional

time to complete installation and minimize the harm that may affect small entities due to the shorter deadline.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

26. None.

B. Comment Due Dates and Filing Procedures

27. We invite comment on the issues and questions set forth in the FNPRM of Proposed Rulemaking and Initial Regulatory Flexibility Analysis contained herein. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may comment on or before May 23, 2001, and reply comment on or before May 30, 2001. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24,121, May 1, 1998.

V. Ordering Clauses

28. Pursuant to the authority contained in sections 1-4, 201-205, 254, 303(r), and 403 of the Communications Act of 1934, as amended, and §§ 0.91, 0.291, 1.3, and 1.411 of the Commission's rules, this Further Notice of Proposed Rulemaking and Order is adopted.

29. The deadline for the implementation of non-recurring services in Funding Year 3 of the schools and libraries universal support mechanism for all applicants is extended from June 30, 2001 to September 30, 2001.

30. Applicants in Funding Year 3 may extend existing contracts for non-recurring services until September 30, 2001, without having to comply with the Commission's competitive bidding requirements.

31. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Further Notice of Proposed Rulemaking and Order, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission

Magalie Roman Salas,

Secretary.

[FR Doc. 01-11514 Filed 5-7-01; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 26

[Docket OST-2000-7639]

RIN 2105-AC88

Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs; Memorandum of Understanding With the Small Business Administration; Uniform Forms and Other Revisions

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Transportation (DOT or the Department) is proposing revisions to the Department's regulations for its Disadvantaged Business Enterprise (DBE) program (49 CFR part 26). In its final DBE rule the Department reserved publication of a uniform reporting form and a uniform certification application form for a later date. This document proposes those forms. In addition, this document proposes implementation procedures for a Memorandum of Understanding (MOU) between DOT and the U.S. Small Business Administration (SBA). The MOU streamlines certification procedures for participation in SBA's 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs, and DOT's DBE program for small and disadvantaged businesses. Finally, this document proposes substantive changes to several provisions, including: Personal net worth, retainage, the size standard, proof of ethnicity, confidentiality, proof of economic disadvantage, and DBE credit for trucking firms.

DATES: Comments should be received no later than June 7, 2001. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Interested persons should send comments to Docket Clerk, Docket No. OST-2000-7639, Department of Transportation, 400 7th Street, SW., Room PL-401, Washington, DC 20590. We request that, in order to minimize burdens on the docket clerk's staff, commenters send three copies of their comments to the docket. Commenters wishing to have their submissions acknowledged should include a stamped, self-addressed postcard with their comments. The docket clerk will date stamp the postcard and return it to the commenter. Comments will be available for inspection at the above

address from 10:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Laura A. Aguilar, Attorney, Office of Environmental, Civil Rights, and General Law, Department of Transportation, 400 7th Street, SW., Room 10102, Washington, DC 20590, phone numbers (202) 366-0365 (voice), (202) 366-9170 (fax), (202) 755-7687 (TDD), laura.aguilar@ost.dot.gov (e-mail).

SUPPLEMENTARY INFORMATION:

Background

On February 2, 1999, the Department published a final rule revising its Disadvantaged Business Enterprise (DBE) program. The new regulations (49 CFR part 26) replaced 49 CFR part 23, except for the airport concessions regulations. In shaping the final rule, the Department responded to 600 comments on its December 1992 Notice of Proposed Rulemaking (NPRM), and 300 comments on its May 1997 Supplemental Notice of Proposed Rulemaking (SNPRM). The Department also participated in the Clinton Administration's review of affirmative action programs and listened carefully to Congressional debate during the reauthorization of the Department's DBE program in the Transportation Equity for the 21st Century (TEA-21). The final rule also incorporates requirements set forth in the Supreme Court's June 1995 decision in *Adarand v. Peña*. The result is a narrowly tailored program that provides a "level playing field" for small socially and economically disadvantaged businesses.

There are three different parts addressed in this document. The first part addresses uniform forms. In the final rule, the Department stated that it would develop a single reporting form and a standard DOT application form for DBE eligibility. The Department did not want to delay the issuance of the final rule, so it reserved the date on which the uniform form requirements would go into effect. This document addresses both of these forms. The second part addresses the implementation of a Memorandum of Understanding (MOU) between the DOT and the Small Business Administration (SBA). The MOU streamlines certification procedures for participation in SBA's 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs and DOT's DBE program. The final part proposes substantive changes to several provisions, including: personal net worth, retainage, proof of ethnicity,